
By: **Delegate Frush (Chairman, Joint Committee on the Chesapeake and Atlantic Coastal Bays Critical Area) and Delegates Cadden, James, Owings, Walkup, Barkley, Barve, Bobo, Bronrott, Brown, Busch, Cane, V. Clagett, Conroy, Cryor, Doory, Dumais, Feldman, Gaines, Gilleland, Glassman, Goldwater, Gordon, Griffith, Healey, Holmes, Howard, Hubbard, Hurson, Jennings, Jones, King, Lee, Leopold, Madaleno, Malone, Mandel, McConkey, McIntosh, McKee, Menes, Moe, Montgomery, Morhaim, Murray, Nathan-Pulliam, Niemann, Parker, Patterson, Pendergrass, Petzold, Proctor, Quinter, Ramirez, Ross, Shank, Simmons, Sophocleus, Sossi, Stern, Stull, Taylor, F. Turner, V. Turner, Vallario, Vaughn, and Weir**

Introduced and read first time: February 12, 2004
Assigned to: Environmental Matters

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 26, 2004

CHAPTER _____

1 AN ACT concerning

2 **Chesapeake and Atlantic Coastal Bays Critical Area Protection Program -**
3 **Miscellaneous Enforcement Provisions**

4 FOR the purpose of requiring a local jurisdiction to make a certain presumption when
5 considering a variance application under the Chesapeake and Atlantic Coastal
6 Bays Critical Area Protection Program; establishing certain burdens of proof
7 and persuasion in an application for a certain variance; requiring a local
8 jurisdiction to make certain findings and authorizing the findings to be based on
9 certain evidence and testimony; authorizing a local jurisdiction to consider
10 certain facts when making certain findings; requiring a local jurisdiction's
11 critical area program to include certain buffer requirements and penalty
12 provisions; authorizing a local jurisdiction to consider certain factors in
13 determining the amount of a certain penalty; authorizing a local jurisdiction
14 under certain circumstances to request certain enforcement assistance from the
15 Chairman of the Chesapeake and Atlantic Coastal Bays Critical Area
16 Commission or the Attorney General; declaring and clarifying certain findings of
17 the General Assembly; altering the application of a certain defined term;
18 ~~providing for the application of this Act~~; and generally relating to the

1 enforcement of the Chesapeake and Atlantic Coastal Bays Critical Area
2 Protection Program.

3 BY repealing and reenacting, with amendments,
4 Article - Natural Resources
5 Section 8-1801, 8-1802(a), 8-1808, 8-1808.5(a), 8-1815, and 8-1815.1
6 Annotated Code of Maryland
7 (2000 Replacement Volume and 2003 Supplement)

8 Preamble

9 WHEREAS, With the enactment of the Chesapeake Bay Critical Area
10 Protection Act in 1984, State lawmakers recognized the major detrimental impact of
11 development activity along the shoreline of the Chesapeake Bay and its tributaries,
12 an area that is pivotal to the preservation and protection of water quality and natural
13 habitat; and

14 WHEREAS, Two years later, in approving the State Critical Area program and
15 its criteria, the General Assembly specified the need for a shoreline buffer of at least
16 100 feet, and this minimum buffer has been an essential critical area component ever
17 since that time; and

18 WHEREAS, Also considered fundamental to the critical area criteria since their
19 inception in the mid-1980s is, under certain circumstances, the allowance of
20 variances to a local jurisdiction's critical area program; and

21 WHEREAS, In keeping with an equitable application of critical area
22 requirements, on average 90% or more of the variances requested each year have
23 been granted; and

24 WHEREAS, The General Assembly has always recognized, nevertheless, that
25 attainment of critical area program goals necessitates a clear authority in support of
26 local jurisdictions when, in their discretion, a variance must be denied; and

27 WHEREAS, From the beginning of the critical area program in the mid-1980s
28 through 1999, courts consistently interpreted the variance standard of unwarranted
29 hardship in accordance with the intent of the General Assembly, that is, as a
30 deprivation of the reasonable use of the entire property which is equivalent to an
31 unnecessary or unreasonable hardship; and

32 WHEREAS, In 2002, with a particular awareness of the growing danger to
33 water quality and natural habitat presented by the magnitude of waterfront
34 development, the General Assembly expanded the application of critical area
35 protections so as to include the ecologically sensitive Atlantic Coastal Bays and their
36 tributaries; and

37 WHEREAS, Also in During that same legislative session, in Chapter 431 of the
38 Acts of 2002, the General Assembly overruled three then-recent decisions by the
39 Maryland Court of Appeals that, by undermining the variance standard of

1 unwarranted hardship, had, in effect, substantially ~~weakened~~ undermined the
2 authority of local jurisdictions' critical area programs ~~in the denial of~~ to deny
3 variances; and

4 WHEREAS, Despite the authority of Chapter 431 and its clear direction that
5 local jurisdictions are to consider the entire parcel or lot in determining if a variance
6 applicant would be subject to unwarranted hardship, some courts and administrative
7 decisionmakers continue to focus on only part of the property, the 100-foot buffer; and

8 WHEREAS, In its recent decision of Lewis v. Department of Natural Resources,
9 the Court of Appeals suggested that a prohibition on new development in the buffer,
10 even when viable alternatives exist elsewhere on the parcel, may constitute a taking
11 of property without just compensation, and the General Assembly profoundly
12 disagrees with this suggestion; and

13 WHEREAS, ~~A recent decision by~~ Moreover, in its Lewis ruling, the Court of
14 Appeals, ~~Lewis v. Department of Natural Resources,~~ has: rejected the finding of the
15 General Assembly that the cumulative impact of development is harmful to the
16 critical area; shifted the burdens of proof and persuasion to local jurisdictions with
17 respect to the denial of a critical area variance application, thus adding burdensome
18 requirements and unnecessary expenses to their consideration of variance
19 applications; and opened the door for citizens to view unpermitted development
20 activity in the critical area as viable due to the lack of detrimental consequence; and

21 WHEREAS, ~~The~~ Although the Lewis ruling is holding and its associated dicta
22 are clearly contrary to the intent of the General Assembly's enactment of both the
23 Chesapeake Bay Critical Area Protection Act and the Atlantic Coastal Bays
24 Protection Act, these erroneous understandings have already been cited by lower
25 courts and administrative decisionmakers as binding precedent or at least as
26 persuasive authority, and it is the goal of the General Assembly to put an end to this
27 developing trend as soon as possible; and

28 WHEREAS, Over the past two decades, despite the vigilant efforts of the State
29 and local critical area programs and the ongoing focus of the General Assembly, State
30 agencies, advocacy groups, and private citizens, the health of the Chesapeake Bay has
31 continued to deteriorate, as has water quality overall, and this fact has been
32 substantiated in dozens of studies by a variety of government and private interest
33 groups; and

34 WHEREAS, It has become readily apparent that local jurisdictions must have
35 more viable enforcement options available to them if their critical area programs are
36 to be implemented as intended by the General Assembly; and

37 WHEREAS, Acting out of this long-standing and consistent commitment to the
38 preservation of the Chesapeake and Atlantic Coastal Bays and their ecosystems,
39 which are among Maryland's most precious resources, it is the intent of the General
40 Assembly that this Act shall overrule the Lewis decision and re-establish critical area
41 variance standards, particularly the historic understanding of unwarranted hardship,
42 that existed until weakened by the Court of Appeals, as well as enhance the

1 enforcement mechanisms available to local programs in the administration of their
2 critical area programs; now, therefore,

3 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
4 MARYLAND, That the Laws of Maryland read as follows:

5 **Article - Natural Resources**

6 8-1801.

7 (a) The General Assembly finds and declares that:

8 (1) The Chesapeake and the Atlantic Coastal Bays and their tributaries
9 are natural resources of great significance to the State and the nation;

10 (2) The shoreline and adjacent lands constitute a valuable, fragile, and
11 sensitive part of this estuarine system, where human activity can have a particularly
12 immediate and adverse impact on water quality and natural habitats;

13 (3) The capacity of these shoreline and adjacent lands to withstand
14 continuing demands without further degradation to water quality and natural
15 habitats is limited;

16 (4) HUMAN ACTIVITY IS ~~ESPECIALLY~~ HARMFUL IN THESE SHORELINE
17 AREAS, WHERE THE NEW DEVELOPMENT OF NONWATER-DEPENDENT STRUCTURES
18 OR THE ADDITION OF IMPERVIOUS SURFACES IS PRESUMED TO BE CONTRARY TO
19 THE PURPOSE OF THIS SUBTITLE, BECAUSE ~~EACH ACTIVITY CAUSES THESE~~
20 ACTIVITIES MAY CAUSE ADVERSE IMPACTS, OF BOTH AN IMMEDIATE AND A
21 LONG-TERM NATURE, TO THE CHESAPEAKE AND ATLANTIC COASTAL BAYS, AND
22 THUS IT IS NECESSARY WHEREVER POSSIBLE TO MAINTAIN A BUFFER OF AT LEAST
23 100 FEET LANDWARD FROM THE MEAN HIGH WATER LINE OF TIDAL WATERS,
24 TRIBUTARY STREAMS, AND TIDAL WETLANDS;

25 (5) National studies have documented that the quality and productivity
26 of the waters of the Chesapeake Bay and its tributaries have declined due to the
27 cumulative effects of human activity that have caused increased levels of pollutants,
28 nutrients, and toxics in the Bay System and declines in more protective land uses
29 such as forestland and agricultural land in the Bay region;

30 [(5)] (6) Those portions of the Chesapeake and the Atlantic Coastal Bays
31 and their tributaries within Maryland are particularly stressed by the continuing
32 population growth and development activity concentrated in the
33 Baltimore-Washington metropolitan corridor and along the Atlantic Coast;

34 [(6)] (7) The quality of life for the citizens of Maryland is enhanced
35 through the restoration of the quality and productivity of the waters of the
36 Chesapeake and the Atlantic Coastal Bays, and their tributaries;

37 [(7)] (8) The restoration of the Chesapeake and the Atlantic Coastal
38 Bays and their tributaries is dependent, in part, on minimizing further adverse

1 impacts to the water quality and natural habitats of the shoreline and adjacent lands,
2 PARTICULARLY IN THE BUFFER;

3 [(8)] (9) The cumulative impact of current development AND OF EACH
4 NEW DEVELOPMENT ACTIVITY IN THE BUFFER is inimical to these purposes; and

5 [(9)] (10) There is a critical and substantial State interest for the benefit
6 of current and future generations in fostering more sensitive development activity in
7 a consistent and uniform manner along shoreline areas of the Chesapeake and the
8 Atlantic Coastal Bays and their tributaries so as to minimize damage to water quality
9 and natural habitats.

10 (b) It is the purpose of the General Assembly in enacting this subtitle:

11 (1) To establish a Resource Protection Program for the Chesapeake and
12 the Atlantic Coastal Bays and their tributaries by fostering more sensitive
13 development activity for certain shoreline areas so as to minimize damage to water
14 quality and natural habitats; and

15 (2) To implement the Resource Protection Program on a cooperative
16 basis between the State and affected local governments, with local governments
17 establishing and implementing their programs in a consistent and uniform manner
18 subject to State criteria and oversight.

19 8-1802.

20 (a) (1) In this subtitle the following words have the meanings indicated.

21 (2) "Atlantic Coastal Bays" means the Assawoman, Isle of Wight,
22 Sinepuxent, Newport, and Chincoteague Bays.

23 (3) "Atlantic Coastal Bays Critical Area" means the initial planning area
24 identified under § 8-1807 of this subtitle.

25 (4) "BUFFER" MEANS AN EXISTING, NATURALLY VEGETATED AREA, OR
26 AN AREA ESTABLISHED IN VEGETATION AND MANAGED TO PROTECT AQUATIC,
27 WETLANDS, SHORELINE, AND TERRESTRIAL ENVIRONMENTS FROM MAN-MADE
28 DISTURBANCES.

29 (5) "Chesapeake Bay Critical Area" means the initial planning area
30 identified under § 8-1807 of this subtitle.

31 [(5)] (6) "Commission" means the Critical Area Commission for the
32 Chesapeake and Atlantic Coastal Bays established in this subtitle.

33 [(6)] (7) "Critical Area" means the Chesapeake Bay Critical Area and
34 the Atlantic Coastal Bays Critical Area.

35 [(7)] (8) "Development" means any activity that materially affects the
36 condition or use of dry land, land under water, or any structure.

1 [(8)] (9) "Growth allocation" means the number of acres of land in the
2 Chesapeake Bay Critical Area or Atlantic Coastal Bays Critical Area that a local
3 jurisdiction may use to create new intensely developed areas and new limited
4 development areas.

5 [(9)] (10) "Includes" means includes or including by way of illustration
6 and not by way of limitation.

7 [(10)] (11) "Land classification" means the designation of land in the
8 Chesapeake Bay Critical Area or Atlantic Coastal Bays Critical Area in accordance
9 with the criteria adopted by the Commission as an intensely developed area or
10 district, a limited development area or district, or a resource conservation area or
11 district.

12 [(11)] (12) "Local jurisdiction" means a county, or a municipal corporation
13 with planning and zoning powers, in which any part of the Chesapeake Bay Critical
14 Area or the Atlantic Coastal Bays Critical Area, as defined in this subtitle, is located.

15 [(12)] (13) (i) "Program" means the critical area protection program of a
16 local jurisdiction.

17 (ii) "Program" includes any amendments to the program.

18 [(13)] (14) (i) "Program amendment" means any change to an adopted
19 program that the Commission determines will result in a use of land or water in the
20 Chesapeake Bay Critical Area or the Atlantic Coastal Bays Critical Area in a manner
21 not provided for in the adopted program.

22 (ii) "Program amendment" includes a change to a zoning map that
23 is not consistent with the method for using the growth allocation contained in an
24 adopted program.

25 [(14)] (15) (i) "Program refinement" means any change to an adopted
26 program that the Commission determines will result in a use of land or water in the
27 Chesapeake Bay Critical Area or the Atlantic Coastal Bays Critical Area in a manner
28 consistent with the adopted program.

29 (ii) "Program refinement" includes:

30 1. A change to a zoning map that is consistent with the
31 development area designation of an adopted program; and

32 2. The use of the growth allocation in accordance with an
33 adopted program.

34 [(15)] (16) (i) "Project approval" means the approval of development,
35 other than development by a State or local government agency, in the Chesapeake
36 Bay Critical Area or the Atlantic Coastal Bays Critical Area by the appropriate local
37 approval authority.

- 1 (ii) "Project approval" includes:
- 2 1. Approval of subdivision plats and site plans;
- 3 2. Inclusion of areas within floating zones;
- 4 3. Issuance of variances, special exceptions, and conditional
5 use permits; and
- 6 4. Approval of rezoning.
- 7 (iii) "Project approval" does not include building permits.

8 8-1808.

9 (a) (1) It is the intent of this subtitle that each local jurisdiction shall have
10 primary responsibility for developing and implementing a program, subject to review
11 and approval by the Commission.

12 (2) (i) The Governor shall include in the budget a sum of money to be
13 used for grants to reimburse local jurisdictions for the reasonable costs of developing
14 a program under this section.

15 (ii) Each local jurisdiction shall submit to the Governor a detailed
16 request for funds that are equivalent to the additional costs incurred in developing
17 the program under this section.

18 (iii) The Governor shall include in the fiscal year 2003 budget a sum
19 of money to be used for grants to reimburse local jurisdictions in the Atlantic Coastal
20 Bays Critical Area for the reasonable costs of developing a program under this
21 section.

22 (3) The Governor shall include in the budget annually a sum of money to
23 be used for grants to assist local jurisdictions with the reasonable costs of
24 implementing a program under this section. Each local jurisdiction shall submit to
25 the Governor by May 1 of each year a detailed request for funds to assist in the
26 implementation of a program under this section.

27 (b) A program shall consist of those elements which are necessary or
28 appropriate:

29 (1) To minimize adverse impacts on water quality that result from
30 pollutants that are discharged from structures or conveyances or that have run off
31 from surrounding lands;

32 (2) To conserve fish, wildlife, and plant habitat; and

33 (3) To establish land use policies for development in the Chesapeake Bay
34 Critical Area or the Atlantic Coastal Bays Critical Area which accommodate growth
35 and also address the fact that, even if pollution is controlled, the number, movement,
36 and activities of persons in that area can create adverse environmental impacts.

1 (c) (1) At a minimum, a program sufficient to meet the goals stated in
2 subsection (b) of this section includes:

3 ~~(1)~~ (I) A map designating the critical area in a local jurisdiction;

4 ~~(2)~~ (II) A comprehensive zoning map for the critical area;

5 ~~(3)~~ (III) As necessary, new or amended provisions of the jurisdiction's:

6 ~~(i)~~ 1. Subdivision regulations;

7 ~~(ii)~~ 2. Comprehensive or master plan;

8 ~~(iii)~~ 3. Zoning ordinances or regulations;

9 ~~(iv)~~ 4. Provisions relating to enforcement; and

10 ~~(v)~~ 5. Provisions as appropriate relating to grandfathering of
11 development at the time the program is adopted or approved by the Commission;

12 ~~(4)~~ (IV) Provisions requiring that project approvals shall be based on
13 findings that projects are consistent with the standards stated in subsection (b) of this
14 section;

15 ~~(5)~~ (V) Provisions to limit the amount of land covered by buildings,
16 roads, parking lots, or other impervious surfaces, and to require or encourage cluster
17 development, where necessary or appropriate;

18 ~~(6)~~ (VI) Establishment of buffer areas along shorelines within which
19 agriculture will be permitted only if best management practices are used, provided
20 that structures or any other use of land which is necessary for adjacent agriculture
21 shall also be permitted in any buffer area;

22 ~~(7)~~ (VII) Requirements for minimum setbacks for structures and septic
23 fields along shorelines, INCLUDING THE ESTABLISHMENT OF A MINIMUM BUFFER
24 LANDWARD FROM THE MEAN HIGH WATER LINE OF TIDAL WATERS, TRIBUTARY
25 STREAMS, AND TIDAL WETLANDS.

26 ~~(8)~~ (VIII) Designation of shoreline areas, if any, that are suitable for
27 parks, hiking, biking, wildlife refuges, scenic drives, public access or assembly, and
28 water-related recreation such as boat slips, piers, and beaches;

29 ~~(9)~~ (IX) Designation of shoreline areas, if any, that are suitable for
30 ports, marinas, and industries that use water for transportation or derive economic
31 benefits from shore access;

32 ~~(10)~~ (X) Provisions requiring that all harvesting of timber in the
33 Chesapeake Bay Critical Area or the Atlantic Coastal Bays Critical Area be in
34 accordance with plans approved by the district forestry board;

1 (11) (XI) Provisions establishing that the controls in a program which are
2 designed to prevent runoff of pollutants will not be required on sites where the
3 topography prevents runoff from directly or indirectly reaching tidal waters;

4 (12) (XII) Provisions for reasonable accommodations in policies or
5 procedures when the accommodations are necessary to avoid discrimination on the
6 basis of physical disability, including provisions that authorize a local jurisdiction to
7 require removal of a structure that was installed or built to accommodate a physical
8 disability and require restoration when the accommodation permitted by this
9 paragraph is no longer necessary; [and]

10 (13) (XIII) Except as provided in subsection (d) of this section, provisions
11 for granting a variance to the local jurisdiction's critical area program, in accordance
12 with regulations adopted by the Commission concerning variances set forth in
13 COMAR 27.01.11; AND

14 (14) (XIV) PENALTY PROVISIONS ESTABLISHING THAT, IN ADDITION TO
15 ANY OTHER PENALTY APPLICABLE UNDER STATE OR LOCAL LAW, A PERSON WHO
16 VIOLATES A PROVISION OF THIS SUBTITLE OR OF A PROGRAM IS SUBJECT TO A FINE
17 NOT EXCEEDING \$10,000.

18 (2) IN DETERMINING THE AMOUNT OF THE PENALTY TO BE ASSESSED
19 UNDER PARAGRAPH (1)(XIV) OF THIS SUBSECTION, A LOCAL JURISDICTION MAY
20 CONSIDER:

21 (I) THE GRAVITY OF THE VIOLATION;

22 (II) ANY WILLFULNESS OR NEGLIGENCE INVOLVED IN THE
23 VIOLATION; AND

24 (III) THE ENVIRONMENTAL IMPACT OF THE VIOLATION.

25 (d) (1) IN THIS SUBSECTION, "UNWARRANTED HARDSHIP" MEANS THAT,
26 WITHOUT A VARIANCE, AN APPLICANT WOULD BE DENIED REASONABLE AND
27 SIGNIFICANT USE OF THE ENTIRE PARCEL OR LOT FOR WHICH THE VARIANCE IS
28 REQUESTED.

29 (2) (I) IN CONSIDERING AN APPLICATION FOR A VARIANCE, A LOCAL
30 JURISDICTION SHALL PRESUME THAT ~~ANY NEW~~ THE SPECIFIC DEVELOPMENT
31 ACTIVITY IN THE CRITICAL AREA THAT IS SUBJECT TO THE APPLICATION AND FOR
32 WHICH A VARIANCE IS REQUIRED DOES NOT CONFORM WITH THE LOCAL PROGRAM
33 GENERAL PURPOSE AND INTENT OF THIS SUBTITLE, REGULATIONS ADOPTED UNDER
34 THIS SUBTITLE, AND THE REQUIREMENTS OF THE LOCAL JURISDICTION'S PROGRAM.

35 (II) IF THE VARIANCE REQUEST IS BASED ON CONDITIONS OR
36 CIRCUMSTANCES THAT ARE THE RESULT OF ACTIONS BY THE APPLICANT,
37 INCLUDING THE COMMENCEMENT OF DEVELOPMENT ACTIVITY BEFORE AN
38 APPLICATION FOR A VARIANCE HAS BEEN FILED, A LOCAL JURISDICTION MAY
39 CONSIDER THAT FACT.

1 (3) (I) AN APPLICANT HAS THE BURDEN OF PROOF AND THE BURDEN
2 OF PERSUASION TO OVERCOME THE PRESUMPTION ESTABLISHED UNDER
3 PARAGRAPH (2)(I) OF THIS SUBSECTION.

4 (II) 1. BASED ON COMPETENT AND SUBSTANTIAL EVIDENCE, A
5 LOCAL JURISDICTION SHALL MAKE WRITTEN FINDINGS AS TO WHETHER THE
6 APPLICANT HAS OVERCOME THE PRESUMPTION ESTABLISHED UNDER PARAGRAPH
7 (2)(I) OF THIS SUBSECTION.

8 2. WITH DUE REGARD FOR THE PERSON'S EXPERIENCE,
9 TECHNICAL COMPETENCE, AND SPECIALIZED KNOWLEDGE, THE WRITTEN FINDINGS
10 MAY BE BASED ON EVIDENCE INTRODUCED AND TESTIMONY PRESENTED BY:

11 A. THE APPLICANT;

12 B. THE LOCAL JURISDICTION OR ANY OTHER GOVERNMENT
13 AGENCY; OR

14 C. ANY OTHER PERSON DEEMED APPROPRIATE BY THE
15 LOCAL JURISDICTION.

16 (4) A variance to a local jurisdiction's critical area program may not be
17 granted unless:

18 (i) Due to special features of a site, or special conditions or
19 circumstances peculiar to the applicant's land or structure, a literal enforcement of
20 the critical area program would result in unwarranted hardship to the applicant;

21 (ii) The local jurisdiction finds that the applicant has satisfied each
22 one of the variance provisions; and

23 (iii) Without the variance, the applicant would be deprived of a use
24 of land or a structure permitted to others in accordance with the provisions of the
25 critical area program.

26 [(2) In considering an application for a variance, a local jurisdiction shall
27 consider the reasonable use of the entire parcel or lot for which the variance is
28 requested.

29 (3)] (5) This subsection does not apply to building permits or activities
30 that comply with a buffer exemption plan or buffer management plan of a local
31 jurisdiction which has been approved by the Commission.

32 (e) (1) The Commission shall adopt by regulation on or before December 1,
33 1985 criteria for program development and approval, which are necessary or
34 appropriate to achieve the standards stated in subsection (b) of this section. Prior to
35 developing its criteria and also prior to adopting its criteria, the Commission shall
36 hold at least 6 regional public hearings, 1 in each of the following areas:

37 (i) Harford, Cecil, and Kent counties;

- 1 (ii) Queen Anne's, Talbot, and Caroline counties;
- 2 (iii) Dorchester, Somerset, and Wicomico counties;
- 3 (iv) Baltimore City and Baltimore County;
- 4 (v) Charles, Calvert, and St. Mary's counties; and
- 5 (vi) Anne Arundel and Prince George's counties.

6 (2) During the hearing process, the Commission shall consult with each
7 affected local jurisdiction.

8 (f) Nothing in this section shall impede or prevent the dredging of any
9 waterway in a critical area. However, dredging in a critical area is subject to other
10 applicable federal and State laws and regulations.

11 (g) In adopting the initial land classification for the Atlantic Coastal Bays
12 Critical Area, the local program:

13 (1) Of the Town of Ocean City shall classify as an intensely developed
14 area that area that is within the municipal boundaries of Ocean City as of January 1,
15 2002; and

16 (2) Of Worcester County shall classify as an intensely developed area
17 that area located on the western mainland that is east of Golf Course Road, south of
18 Charles Street, and north of Route 707 (Old Bridge Road).

19 (h) The provisions of this subtitle and Title 27 of the Code of Maryland
20 Regulations apply to the Atlantic Coastal Bays Critical Area.

21 8-1808.5.

22 (a) (1) In this section [the following words have the meanings indicated.

23 (2) "Buffer" means an existing, naturally vegetated area, or an area
24 established in vegetation and managed to protect aquatic, wetlands, shoreline, and
25 terrestrial environments from man-made disturbances.

26 (3) (i) "Community], "COMMUNITY pier" means a boat docking facility
27 associated with a subdivision or similar residential area, or with condominiums,
28 apartments, or other multiple-family dwelling units.

29 [(ii)] (2) "Community pier" does not include a private pier or a
30 mooring.

31 8-1815.

32 (a) (1) Violators of the provisions of programs approved or adopted by the
33 Commission shall be subject to prosecution or suit by local authorities, who may
34 invoke the sanctions and remedies afforded by State or local law.

1 (2) A LOCAL AUTHORITY MAY REQUEST:

2 (I) ASSISTANCE FROM THE COMMISSION IN AN ENFORCEMENT
3 ACTION; OR

4 (II) THAT THE CHAIRMAN REFER AN ENFORCEMENT ACTION TO
5 THE ATTORNEY GENERAL.

6 (b) Whenever the chairman has reason to believe that a local jurisdiction is
7 failing to enforce the requirements of a program applicable to a particular
8 development, the chairman shall serve notice upon the local enforcement authorities.
9 If within 30 days after service of the notice, the local authorities have failed to initiate
10 an action to remedy or punish the violation, the chairman may refer the matter to the
11 Attorney General.

12 (c) Upon referral of an alleged violation under subsection (A) OR (b) of this
13 section, the Attorney General may invoke any sanction or remedy available to local
14 authorities, in any court of competent jurisdiction in which the local authorities would
15 be authorized to prosecute or sue the violator.

16 (d) In addition to any other sanction or remedy available, the Attorney
17 General may bring an action in equity to compel compliance or restrain
18 noncompliance with the requirements of approved project plans, and to compel
19 restoration of lands or structures to their condition prior to any modification which
20 was done in violation of approved project plans.

21 (e) Notwithstanding any other provision of this section, whenever a
22 development in the Critical Area is proceeding in violation of approved project plans
23 and threatens to immediately and irreparably degrade the quality of tidal waters or
24 fish, wildlife, or plant habitat, the Attorney General, upon request of the chairman,
25 may bring an action to restrain the violation and, as appropriate, to compel
26 restoration of any land or water areas affected by the development.

27 8-1815.1.

28 (a) (1) The provisions of this section are in addition to any other sanction,
29 remedy, or penalty provided by law.

30 (2) This section does not apply to any cutting or clearing of trees that is
31 allowed under regulations adopted by the Commission under this subtitle.

32 (b) If a person cuts or clears or plans to cut or clear trees within the
33 Chesapeake Bay Critical Area or Atlantic Coastal Bays Critical Area in violation of
34 AN APPROVED LOCAL CRITICAL AREA PROGRAM OR OF regulations adopted by the
35 Commission, the local jurisdiction may bring an action OR REQUEST THAT THE
36 CHAIRMAN OF THE COMMISSION REFER THE MATTER TO THE ATTORNEY GENERAL
37 TO BRING AN ACTION:

1 (1) To require the person to replant trees where the cutting or clearing
2 occurred in accordance with a plan prepared by the State Forester, a registered
3 professional forester, or a registered landscape architect;

4 (2) To restrain the planned violation; or

5 (3) For damages:

6 (i) To be assessed by a circuit court in an amount equal to the
7 estimated cost of replanting trees; and

8 (ii) To be paid to the Department by the person found to have
9 violated the provisions of this subsection.

10 (c) If the Chairman of the Commission has reason to believe that the local
11 jurisdiction is failing to enforce the requirements of subsection (b) of this section, the
12 Chairman shall refer the matter to the Attorney General as provided under § 8-1815
13 (b) of this subtitle.

14 (d) On the Chairman of the Commission's referral of an alleged violation
15 under subsection (c) of this section to the Attorney General, the Attorney General may
16 invoke the remedies available to the local jurisdiction under subsection (b) of this
17 section in any court of competent jurisdiction in which the local jurisdiction would be
18 authorized to prosecute or sue.

19 (e) On the request of a local jurisdiction or the Chairman of the Commission,
20 the State Forester, a registered professional forester, or a registered landscape
21 architect may prepare, oversee, and approve the final implementation of a plan to:

22 (1) Replant trees in any part of the Chesapeake Bay Critical Area where
23 trees in the Chesapeake Bay Critical Area are cut or cleared in violation of subsection
24 (b) of this section; and

25 (2) Replant trees in any part of the Atlantic Coastal Bays Critical Area
26 where trees in the Atlantic Coastal Bays Critical Area are cut or cleared in violation
27 of subsection (b) of this section.

28 ~~SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be~~
29 ~~construed to apply only prospectively and may not be applied or interpreted to have~~
30 ~~any effect on or application to any dwelling unit in existence or for which all necessary~~
31 ~~permits for construction had been issued before the effective date of this Act.~~

32 ~~SECTION 3-2.~~ AND BE IT FURTHER ENACTED, That this Act shall take
33 effect June 1, 2004.

